

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARY ROZZI CHURCH, an individual, on  
behalf of herself and those similarly situated,

Plaintiff,

COURT FILE NO. 6:16-cv-6391-FPG  
Judge Frank P. Geraci, Jr.

v.

FINANCIAL RECOVERY SERVICES, INC.,

Defendant.

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**NOTICE OF SUPPLEMENTAL AUTHORITY**

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Defendant Financial Recovery Services, Inc. (“FRS”) hereby files this notice of supplemental authority. FRS respectfully call the Court’s attention to the attached decision of the Honorable William J. Martini, of the United States District Court for the District of New Jersey, in *Lynn Antista et al. vs. Financial Recovery Services, Inc., et al.*, court file number 2:17-cv-3567, dated December 28, 2017, as supplemental authority supporting its motion to dismiss or alternatively for summary judgment (Doc. Nos. 46-47).

In this case, Plaintiff asserts that the following language violated the FDPCA:

These settlement offers may have tax consequences. We recommend that you consult independent tax counsel of your own choosing if you desire advice about any tax consequences which may result from this settlement.

Pl. Compl. (Doc. No. 1). In the *Antista* case, FRS sought dismissal of a claim that it violated the Fair Debt Collection Practices Act by informing the consumer that “This settlement may have

tax consequences. Please consult your tax advisor.” in its collection notice. The language at issue in *Antista* is similar to that now at issue before the Court. (Doc. No. 1, pages 5-6). Plaintiff’s sole remaining claim relates to the language quoted above, which, just like the *Antista* case, relates FRS’ language regarding settlement offers and tax consequences. Judge Martini stated in his opinion that:

“There is no need to determine whether these exceptions apply to Plaintiff; even if they do, the statement that settlement ‘may have tax consequences’ is not false, deceptive or misleading. Indeed, settlement ‘*may* have tax consequences’ depending on a debtor’s individual circumstances.”

As such, FRS believes that *Antista* is persuasive, conceding that the decision is not binding on the Court.

Respectfully submitted,

Dated: January 9, 2018

MOSS & BARNETT

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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on January 9, 2018, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure and/or the Western District's Local Rules, and/or the Western District's Rules on Electronic Service, upon the following parties and participants:

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